

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1538 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SANJAY ALIAS SANJU BABASAHEB KHESE

Versus

STATE OF GUJARAT

Appearance:

MR CL SONI for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/05/2000

ORAL JUDGEMENT

1. Commissioner of Police, Baroda City, Baroda, passed an order on August 25, 1999, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Sanjay alias Sanju Babasaheb Khese under the provisions of the said Act.

2. The detaining authority took into consideration one offence registered against the petitioner, so also the statements of three anonymous witnesses. The detaining authority considered the activities of the detenu as that of a dangerous person as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Mr. Soni, learned advocate appearing for the petitioner, has restricted his arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. He has submitted that the authority has not undertaken the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu. Mr. Soni submitted further that there is only one offence registered against the petitioner and there is no antecedents of the petitioner involving the petitioner in criminal or anti-social activities. He, therefore, submitted that the petition may be allowed and the detenu may be released from detention forthwith.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses and the statements and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining

authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186.

6. So far as the registered cases are concerned, it may be noted that, barring one registered offence, there is nothing to indicate any antecedents involving the petitioner in criminal or anti-social activities, which can be said to be detrimental to public order. The statements, as discussed above, cannot be accepted. Definition of 'dangerous person, runs as under :-

"2(c) "dangerous person" means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V or the Arms Act, 1959;"

A plain reading of this definition indicates that there must be plurality of involvement in criminal activities to bring the detenu within the purview of this definition. He has to be indicated as a habitual offender. Habitual would itself indicate repeated and repeated action, which is absent in the present case.

7. Apart from this, reading of the papers relating to the registered case indicates that it was a case of disturbance to law and order at the most. There is nothing to indicate disturbance to public order. Resultantly, the satisfaction arrived at by the detaining authority about the activities of the detenu being detrimental to public order is without any basis. Neither the statements nor the registered offence can be accepted to form the basis for this satisfaction.

8. In view of the above discussion, the reliance placed by the detaining authority on the statements of anonymous witnesses and the registered offences cannot be upheld. The order of detention as well as the continued detention both are rendered bad in law. The petition, therefore, deserves to be allowed.

7. In the result, the petition is allowed. The impugned order of detention dated August 25, 1999, passed against the detenu is hereby quashed. The detenu-Sanjay alias Sanju Babasaheb Khese is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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